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## SENATE BILL No. 242

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-7-4.

**Synopsis:** Notice of exceptions, uses, and variances. Requires a board of zoning appeals or hearing officer to provide at least 30 days notice to interested parties of a hearing on an administrative appeal or a petition for a special exception, special use, contingent use, conditional use, use variance, or variance from development standards. Requires the legislative body of St. Joseph County and Lake County to provide at least 30 days notice to interested parties of a hearing on a petition for a special exception, special use, or use variance.

**Effective:** July 1, 2004.

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January 8, 2004, read first time and referred to Committee on Governmental Affairs and Interstate Cooperation.

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Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

## SENATE BILL No. 242

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 36-7-4-918.6 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 918.6. (a) This section  
3 applies to a county having a population of:

4 (1) more than four hundred thousand (400,000) but less than  
5 seven hundred thousand (700,000); or

6 (2) more than two hundred thousand (200,000) but less than three  
7 hundred thousand (300,000).

8 (b) ADVISORY—AREA. Notwithstanding sections 918.2, 918.4,  
9 and 918.5 of this chapter, a zoning or subdivision control ordinance  
10 shall require that the board of zoning appeals submit any of the  
11 following petitions to the legislative body for approval or disapproval:

12 (1) Special exceptions.

13 (2) Special uses.

14 (3) Use variances.

15 (c) ADVISORY—AREA. The board of zoning appeals shall file a  
16 petition under this section with the clerk of the legislative body with:

17 (1) a favorable recommendation;



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(2) an unfavorable recommendation; or

(3) no recommendation.

(d) ADVISORY—AREA. The legislative body shall give notice under IC 5-14-1.5-5 of its intention to consider the petition. **at The legislative body shall give notice to interested parties at least thirty (30) days before the date set for the meeting on the petition. The legislative body shall consider the petition at:**

(1) its first regular meeting; or

**(2) its second regular meeting, if necessary, in order to comply with the thirty (30) day notice requirement to interested parties;**

after the board of zoning appeals files its recommendation.

(e) ADVISORY—AREA. A petition is granted or denied when the legislative body votes on the petition as follows:

(1) In a county described in subsection (a)(1), the legislative body shall vote on the petition within ninety (90) days after the board of zoning appeals makes its recommendation. If the legislative body does not vote to deny the petition within ninety (90) days, the petition is considered approved.

(2) In a county described in subsection (a)(2), the legislative body shall vote on the petition within sixty (60) days after the board of zoning appeals makes its recommendations. If the legislative body does not vote to deny the petition within sixty (60) days, the petition is approved.

(f) ADVISORY—AREA. If the legislative body approves a petition, it must make the determination in writing as required under section 918.2, 918.4, or 918.5 of this chapter or as required by the zoning ordinance.

SECTION 2. IC 36-7-4-920 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 920. (a) The board of zoning appeals shall fix a reasonable time for the hearing of administrative appeals, exceptions, uses, and variances.

(b) Public notice in accordance with IC 5-3-1-2 and IC 5-3-1-4 and due notice to interested parties shall be given at least ~~ten (10)~~ **thirty (30)** days before the date set for the hearing.

(c) The party taking the appeal, or applying for the exception, use, or variance, may be required to assume the cost of public notice and due notice to interested parties. At the hearing, each party may appear in person, by agent, or by attorney.

(d) The board shall, by rule, determine who are interested parties, how notice is to be given to them, and who is required to give that notice.

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(e) The staff (as defined in the zoning ordinance), if any, may appear before the board at the hearing and present evidence in support of or in opposition to the granting of a variance or the determination of any other matter.

(f) Other persons may appear and present relevant evidence.

(g) A person may not communicate with any member of the board before the hearing with intent to influence the member's action on a matter pending before the board. Not less than five (5) days before the hearing, however, the staff (as defined in the zoning ordinance), if any, may file with the board a written statement setting forth any facts or opinions relating to the matter.

(h) The board may require any party adverse to any pending petition to enter a written appearance specifying the party's name and address. If the written appearance is entered more than four (4) days before the hearing, the board may also require the petitioner to furnish each adverse party with a copy of the petition and a plot plan of the property involved.

SECTION 3. IC 36-7-4-923 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 923. (a) This section allows the establishment of an alternate procedure by the plan commission under which there can be a more expedient disposition of certain matters. When authorized by the plan commission, a hearing officer has the power of a board of zoning appeals to approve or deny, through the alternate procedure allowed by this section:

(1) a variance from the development standards of the zoning ordinance in accordance with section 918.5 of this chapter; or

(2) a special exception, special use, contingent use, or conditional use from the terms of the zoning ordinance in accordance with section 918.2 of this chapter; or

(3) a variance of use from the terms of the zoning ordinance in accordance with section 918.4 of this chapter; however, the authority of a hearing officer under this subdivision may be exercised only if:

(A) the area planning law is not applicable; and

(B) the variance of use would allow all of the following:

(i) The expansion of a use currently existing on the tract.

(ii) A use that is consistent with the comprehensive plan.

(b) All requirements for variances, exceptions, and uses imposed by the 900 series apply to the alternate procedure, except to the extent that a provision of section 924 of this chapter imposes a different requirement.

(c) The alternate procedure does not apply in any excluded city as

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described in IC 36-3-1-7. Sections 919(f) and 922 of this chapter do not apply to the alternate procedure.

(d) The hearing officer (who may be a board member, a staff member, or any other person) shall be appointed by the plan commission. More than one (1) hearing officer may be appointed. A hearing officer may be removed from his responsibilities at any time by the plan commission.

(e) **The alternate procedure must require that notice be given to interested parties at least thirty (30) days before the date set for a hearing on a petition for an exception, a use, or a variance.**

(f) METRO. The plan commission may adopt other rules for the alternate procedure not inconsistent with the 900 series of the metropolitan development law. These rules may specify the period during which the staff may indicate whether the staff objects to the proposed variance, exception, or use. These rules may also provide for public notice and due notice to interested parties in accordance with section 920(b), 920(c), and 920(d) of this chapter, but the rules may, because of the nature of the petitions heard under the alternate procedure, provide for a less inclusive definition of "interested person" and provide for a quicker and less burdensome method of giving notice to interested persons than rules applicable to petitions not filed under the alternate procedure. For purposes of subsection (d), the director of the department of metropolitan development shall nominate, and the plan commission shall appoint, all hearing officers; such a hearing officer may be removed from his responsibilities at any time by either the director or the plan commission.

(f) (g) METRO. The plan commission may, if requested by a historic preservation commission created under IC 36-7-11.1-3, appoint:

- (1) a member of the historic preservation commission;
- (2) a member of the historic preservation staff; or
- (3) a person who is an employee of the department of metropolitan development;

as a hearing officer to act in a historic area or historic zoning district created under IC 36-7-11.1-6. The hearing officer may be removed from the hearing officer's responsibilities at any time by either the historic preservation commission or the plan commission.

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